[fols. 1-12-107]

IN THE CIRCUIT COURT, FIRST JUDICIAL DISTRICT, HINDS COUNTY, MISSISSIPPI

No. 13,158

STATE OF MISSISSIPPI

v.

ALBERT LEE

Transcript of Hearing—Filed May 20, 1946

APPEARANCES:

Hon. M. M. McGowan, District Attorney, Seventh Circuit Court, District of Mississippi, Deposit Guaranty Bank Building, Jackson, Mississippi; Hon. John Bell Williams, County Attorney, Hinds County, Raymond, Mississippi,
Appearing for the State of Mississippi.

Hon. Will S. Wells, 513½ E. Capitol, Jackson, Mississippi and Hon. Hugh Barr Miller, 415½ E. Capitol, Jackson, Mississippi,
Appearing for the defendant, Albert Lee.

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[fols. 108-117] J. R. McLEOD having been first duly sworn, was called as a witness by the State of Mississippi, and testified, as follows:

Direct examination.

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[fol. 118] (Thereupon, the jury retires from the courtroom and the following proceedings were had and done in the presence of the Court and absence of the jury).

[fol. 119] By Mr. McGowan (Continuing):

Q. Mack?
A. Yes, sir.
Q. You say about two o'clock the next day he talked to Captain Rogers in your presence?

A. Yes, sir, it was sometime between two and three o'clock; I brought him down to the room to question him regarding this charge.

Q. Who took the statement from him?

A. Captain Rogers.

Q. Captain Rogers did the talking to him and you were listening?

A. Yes, sir.

By the Court: You say you brought him down?

A. Yes, sir.

By Mr. McGowan (Continuing):

Q. I will ask you if at that time or at any previous time he had been threatened or subjected to any abuse whatever?

A. No, sir.

Q. Or any threat whatsoever?

A. No, sir.

Q. I will ask you if he was promised any immunity or any reward at any time before that by anybody?

A. No, sir.

Q. I will ask you if what he said to Captain Rogers in your presence was entirely free and voluntary?

[fol. 120] A. Yes, sir.

Q. I will ask you in whose custody he remained from the time he was arrested on the railroad until the time he was turned over to the jailer?

A. He remained in my custody practically all of the time, there were a few minutes I walked off and left him in the custody of Mr. Hall.

Q. At the time you left him in the custody of Mr. Hall, where was that?

A. Bailey Avenue, 1200 block, parked out on the street, and Mr. Hall said he would——

Q. —Who was present there at that time?

A. There was a number of people around there, people of the community were around there.

Q. I will ask you if he was threatened or intimidated or promised any reward or anything of that nature?

A. Not that I know of at any time.

Q. At the time he talked to you and Captain Rogers, I will ask you if he was threatened, intimidated or offered any reward or any character?

A. No, sir.

Q. What he said was said free and voluntarily?

A. Yes, sir.

Q. I will ask you whether or not Captain Rogers is your superior officer?

A. Yes, sir.

By Mr. McGowan: That is all on that.

[fol. 121] By the Court: You want to cross-examine?

By Mr. Wells: Yes, sir.

Cross-examination.

By Mr. Wells:

Q. Mr. McLeod, this prisoner was put in the city jail by you sometime shortly after midnight following his arrest there on June 6th or 7th, whichever it was?

A. Yes, sir.

Q. He was placed in the city jail, which is a jail maintained here by the City of Jackson over the police headquarters, is it not?

A. Yes, sir.

Q. After you placed him in jail, you didn't see him again until shortly after two o'clock the following day?

A. No, sir.

Q. You don't know what happened to him or who talked to him during that morning?

A. No, I don't know.

Q. I will ask you when he talked to you and Mr. Rogers very shortly after two o'clock on the 7th if he didn't inform you then that he had been mistreated that morning by some of the police officers?

A. After we had taken the statement, finished it, he refused to sign it. We asked if we had mistreated him. He said, "No"; he said somebody did mistreat him.

Q. After you had taken the statement from him and asked him to sign it, he said that he would sign it if you [fol. 122] made him, didn't he?

A. Something to that effect.

Q. Said, "I will sign it if you make me"?

A. I believe that is what he said.

Q. Then Mr. Rogers asked him if you or he had mistreated him and he said "No," but he had been mistreated that morning?

A. He said something about somebody had mistreated him that morning, but didn't say who.

Q. He was in jail that morning?

A. That is right.

Q. Nobody had access to him except police officers?

A. That is all.

Q. Mr. McLeod, at the time this boy was in what you call the "Work Room" and you and Mr. Rogers were questioning him, Mr. Rogers was writing something on the typewriter there during the period of that questioning, wasn't he?

A. Yes.

Q. And took down what transpired there?

A. That is right.

Q. And what he took down purported to be what this boy had told you and the questions you had asked him, is that right?

A. It is what he told us.

Q. That is the thing he wouldn't sign?

A. That is right.

Q. Explaining that he would sign it if he was made to sign it?

A. Yes, sir.

Q. That is when he told you he had been mistreated that morning.

[fol. 123] A. Yes, he said someone had done something,

Q. Handled him pretty rough?

A. Somebody had mistreated him.

By Mr. Wells: I believe that is all with Mr. McLeod.

Redirect examination.

By Mr. McGowan:

Q. He didn't say who it was or where it was?

A. No, sir.

Q. He said he would sign it if you made him sign it?

A. Yes, sir.

Q. When he said that Captain Rogers put it aside?

By Mr. Wells: Let him tell it.

By Mr. McGowan (continuing):

Q. What did he do?

A. Put it aside.

Q. What did he say?

A. Said he wouldn't take a statement under those conditions from anybody.

Q. Did he tell you who had done anything to him?

A. No, sir.

Q. Did he tell you what it was?

A. Didn't tell us what it was or who did it.

Recross-examination.

By Mr. Wells:

Q. Mr. McLeod, at the time you were questioning him, you and Mr. Rogers, the Work Room, the doors to that room [fol. 124] were closed?

A. Yes, sir.

Q. That is a small room about 6 by 8?

A. Or 8 by 10, something like that.

Q. You and Mr. Rogers were in there with him during the entire time?

A. Yes, sir.

Q. I believe you said Mr. Hines and possibly Mr. Sutherland were in there at times?

A. There were in there when we first started and they both left.

Q. They are also officers?

A. Yes, sir.

Q. Members of the detective force of the City of Jackson?

A. Yes, sir.

Q. Were you armed, you and Mr. Rogers, at that time?

A. I am pretty sure we were; I don't know whether Mr. Rogers was or not, I had my gun in my scabbard.

Q. It could easily be seen?

A. At that season of the year I am sure it could because I had my coat off.

By Mr. Wells: That is all.

By the Court (continuing):

Q. Did you ask him who it was that had abused him?

A. Yes, sir—I don't recall—I wouldn't want to make a misstatement on that—I don't recall that was asked.

Q. He didn't state who it was?

A. No, sir.

[fol. 125] Q. Did you ask him what was done to him?

A. I asked what was done to him and he said he was hit.

Q. Did he show any signs of having been abused in any way, shape or form?

A. No, sir, didn't see any signs on him.

Q. Did he point out where he had been struck?

A. No, sir.

Q. Did he tell you about that?

A. He just said he had been hit.

By the Court: That is all.

By Mr. Wells (continuing):

Q. Mr. McLeod, did Mr. Rogers take down those questions you asked him about what had happened to him?

A. No, after he said he had been abused no more questions were taken down.

Q. Do you recall when you brought him into the room there what was the first thing said to him?

A. I wouldn't recall, Mr. Wells, because there are always preliminary questions before we start to take a statement from them.

Q. Did you tell him he might as well come on and tell the truth, it would be better for him?

A. I never told one that.

Q. I am talking about him?

A. No, sir.

Q. Did anybody else tell him that?

A. Not that I know of.

Q. Did you tell him he had been identified, he might as [fol. 126] well admit it?

A. Don't think we told him that.

Q. You don't know about that positively?

A. I know I didn't.

Q. Did anybody tell him that in your presence?

A. Not that I remember.

Q. You don't remember—was that your answer?

A. I don't remember if they did or not.

By Mr. Wells: That is all with Mr. McLeod.

(Witness excused.)

By Wr. Wells: We ask leave to offer some proof.

The defendant makes no contention that he was abused after he was placed in jail at night following his arrest, the contention being that the abuse administered to him happened in the day-time on June 7th, while he was in jail.

FRANK ROGERS having been first duly sworn, was called as a witness by the State of Mississippi, and testified, as follows:

Direct examination.

By Mr. McGowan:

Q. You are Captain Frank Rogers?
A. Yes, sir.
Q. You are the head of the Detective Bureau?
A. Yes, sir.
Q. You have the rank of Captain?
A. Yes, sir.
[fol. 127] Q. Jackson Police Department?
A. Yes, sir.
Q. Do you remember the occasion on June 7, 1944, when this defendant, Albert Lee, was questioned at the City Hall?
A. Yes, sir.
Q. State to the Court under what conditions he was questioned there, who did the questioning and where?
A. Mr. McLeod had this boy, Albert Lee, in the adjoining office to my office there. He called me in there about—around three o'clock in the afternoon of June 7th. I started to talking to Albert Lee. I asked him his age and where he lived and told him I wanted him to tell me just what happened out there on Bailey Avenue the night before. I told him that anything he might say would be used or could be used against him in court and wanted him to give me a free and voluntary statement as to what happened. I asked him if he would do so and he replied he would.
Q. Was he threatened in any wise by you or anyone?
A. No, sir, not in my presence he was not; Mr. McLeod and myself were sitting there.
Q. Was he promised any reward?
A. No, sir.
Q. You state what he stated to you was wholly free and voluntary?
A. Yes, sir, Albert stated——

By the Court:

You need not give the statement, it is a question of whether or not it is competent.

By Mr. McGowan (Continuing):

Q. You proceeded to take a statement from him?

[fol. 128] A. Yes, sir.

Q. That was in the office where—between your office and what other office?

A. Adjoining my office, in the room between the Chief's office and my office.

Q. About what time of day?

A. About 3:15 in the afternoon.

Q. Who were present?

A. Mr. McLeod and myself.

Q. During the interview did anyone else come in?

A. I don't remember whether anyone else came in or not.

Q. When you concluded taking the statement, then what transpired?

A. I asked him if he would mind signing the statement after he read it. He said he wouldn't, he wouldn't mind signing it. I asked him if he had been mistreated in any way, if we had mistreated him in any way. He said, "No"; we had been pretty nice to him but that two men had treated him pretty bad "this morning" and when he said that I didn't take any more statement at all; didn't ask him to sign it, didn't ask him anything else but put him back upstairs.

Q. Did he say anything about he would sign it if he had too?

A. I don't remember, I didn't put it down in writing.

Q. Did he tell you who had mistreated him in any way?

A. I don't remember whether I asked him who, I don't think I did.

Q. You were the superior officer present at that time?

A. Yes, sir, I am the man who wrote down what he said.

[fol. 129] By the Court (Continuing):

Q. Mr. Rogers, had you seen this man after his arrest before the time you refer to?

A. I had not seen him up until the time Mr. McLeod had him down.

Q. Where had he been?

A. Upstairs in jail.

Q. Who was the jailer there?

A. I am sure Mr. Young was the jailer if it was in the daytime.

Q. During the daytime?

A. I am pretty sure Mr. Young was the day jailer; I can't say whether or not he was on duty that particular day or not.

Q. Did you, or anyone in your presence or to your knowledge at any time you had the conversation with him or prior to that time; make any threats toward him whatever?

A. No, sir.

Q. Did you promise him any reward?

A. Didn't promise anything at all.

Q. Did you hold out any hope of immunity from prosecution?

A. No, sir.

Q. Whatever statement he made you say was made entirely free and voluntarily?

A. Yes, sir.

Q. Now when he stated he had been treated roughly by two men, do you recall whether you asked him what was done to him?

A. No, sir, I do not.

Q. Did you observe or did he point out to you any bruises or scars or evidence of having been mistreated?

[fol. 130] A. If I remember right, this boy didn't have any marks on him whatever, or not a mark on him, no bruises or anything else.

By the Court:

Do you want to cross-examine him, Mr. Wells?

Cross-examination.

By Mr. Wells:

Q. Mr. Rogers, as I understand you, when you finished taking the statement you asked him if he would sign it. Did he say he would sign it if you made him?

A. I don't remember that. I don't think so. I put down in my statement what his answer was at that time.

Q. You don't recall he said he would sign it if you made him sign it?

A. No, I do not.

Q. Whatever he did say, Mr. McLeod was present and heard it?

A. Mr. McLeod was there.

Q. Then you asked him if you had mistreated him in any way, he told *hou* that you had been nice to him but two men had treated him kind of bad that morning?

A. Had treated him kind of bad, that was his words.

Q. When that happened you quit asking him any questions at all?

A. That is right.

Q. And had Mr. McLeod take him back to jail?

A. Yes, sir.

Q. And no questions were asked by you or Mr. McLeod in your presence about the circumstances of that treatment?

A. I don't remember; I might have asked him a question or two but I don't remember just what it was.

[fol. 131] Q. Your best recollection is you didn't ask him who had mistreated him or what had happened to him, but just sent him back up stairs?

A. That is true.

Redirect examination.

By Mr. McGowan:

Q. Mr. Rogers, at the time he made this statement he had already told all he had to say to you about it, is that correct?

A. Yes, sir; that is down there at the last part.

Q. And it was made in response to your questions if anybody had treated him wrong?

A. That is right.

Q. What, if anything, did he say that had to do with causing him to make this statement to you?

A. About being mistreated?

Q. What, if anything, did he say that had to do with making the statement he had already made?

A. I don't know that that had anything to do with it.

Q. Did he say that had anything to do with it?

A. I don't remember, I don't remember what happened after that. I just had Mr. McLeod take him back upstairs.

By the Court (Continuing):

Q. Had he made any statement to you whatever—did you or not ask him whether or not he was willing to make a statement?

A. I asked him that, if he was willing to make a free and voluntary statement.

Q. Did you ask him at that time whether or not he had been abused by anybody?

A. Wasn't anything said about that until at the end, I asked him if he had been abused in any way.

[fol. 132] Recross-examination.

By Mr. Wells:

Q. Mr. Rogers, when a man is put in jail in the city, any of the detectives, if it is a case where the detectives take jurisdiction or are interested in investigating, any detective is at liberty to go up in the jail and talk to and interview any prisoner?

A. Yes.

Redirect examination.

By Mr. McGowan:

Q. He was put in jail about what time?

A. I don't know, sir, just exactly when he was placed in jail that night.

Q. Do you know who booked him and put him in jail?

A. No, sir, I don't; I don't know who booked him on the docket.

By the Court (Continuing):

Q. Do you know of your own knowledge whether anyone talked to him during the morning before you saw him and, if so, who it was?

A. No, sir.

Q. You have no information about that?

A. No, sir; I don't know who talked to him or who got him out, to my own knowledge.

(Witness excused.)

By Mr. Wells: I don't mind putting the defendant on the stand. Come around, Albert.

ALBERT LEE, having been first duly sworn, was called as [fol. 133] a witness in his own behalf, and testified as follows:

Direct examination.

By Mr. Wells:

Q. Your name is Albert Lee?

A. Yes, sir.

Q. Albert, you are the defendant in this case, are you?

A. Yes, sir.

Q. Albert, along about midnight on June 6th of last year were you arrested by Mr. McLeod, one of the police officers of Jackson, up near Ash Street, up there by the railroad?

A. Yes, sir.

Q. Placed in jail by him?

A. Yes, sir.

Q. In the city jail?

A. Yes, sir.

Q. After you were put in jail that night were you questioned by anybody that night?

A. No, sir.

Q. Were you questioned by anybody the next morning?

A. Yes, sir.

Q. About what time?

A. About 9 o'clock or 9:30.

Q. Around 9 or 9:30 the next morning?

A. Yes, sir.

Q. Where were you when you were questioned?

A. Brought out of the little room I was in and brought down to the jailer's desk. It was in the room where the jailer sits.

Q. It was in the room where the jailer stays?

A. Yes, sir.

[fol. 134] Q. Who were the men who brought you there?

A. I don't know, sir.

Q. Were they police officers?

A. Yes, sir, they were plain-clothes men; I am pretty sure of it.

Q. Didn't have on uniform?

A. No, sir.

Q. Do you know who those two men were?

A. No, sir, I don't.

Q. Was Mr. McLeod one of them?

A. No, sir.

Q. Have you seen those two officers here in the courtroom since you have been here?

A. Not since I have been here.

Q. Just tell Judge Gillespie what happened that morning.

A. I was brought down into that room.

By the Court (Continuing):

Q. You were brought down into the room downstairs?

A. No, sir, I was still upstairs. I was brought from the——

Q. Cell?

A. Yes, sir.

Q. To the jailer's desk?

A. Yes, sir. One of the men had a slip of paper about that long (indicating) with two pencil marks on it. He told me to hold up my foot. He put the pencil mark under the bottom of my shoe. He said, "It fits, all right."

Q. Talk louder.

A. He says, "It fits all right, this is the one." I said, "No, sir, you have the wrong one, I didn't do anything." [fol. 135] He says, "Yes, you did." I said, "No, sir, I didn't." The- he hit me.

By Mr. Wells (Continuing):

Q. Where did he hit you?

A. The first time right there (indicating).

Q. What did he hit you with?

A. His fist.

Q. Go ahead.

A. I fell back, he pulled me up to him again; he said, "Did you do it?" I said, "No, sir," and he hit me again.

Q. Where did he hit you?

A. In my stomach.

Q. What with?

A. His fist.

Q. Go ahead.

A. He shoved me off of him and he said, "If you go down stairs and say you didn't do it, it will be mighty bad for you."

Q. "If you go downstairs and say you didn't do it, it will be mighty bad for you"?

A. Yes, sir.

Q. That was when?
A. That morning about 9 or 9:30.
Q. About 9:30?
A. Yes, sir.
Q. What was done with you then?
A. Taken back to my cell.
Q. Put back in your cell?
A. Yes, sir.
Q. Did anybody then talk to you again that day?
[fol. 136] A. Mr. McLeod came up to my cell that evening about two or three o'clock and got me.
Q. Took you downstairs?
A. Yes, sir.
Q. Is that when you were questioned by Mr. Rogers and Mr. McLeod?
A. Yes, sir.
Q. When you went in the room there where Mr. Rogers and Mr. McLeod questioned you, I will ask you whether or not you were scared?
A. Yes, sir, I was really scared.
Q. What was it the officer had told you upstairs after he had hit you?
A. He told me if I go downstairs and say I didn't do it, it would be mighty bad for me.
Q. Were your finger prints taken?
A. Yes, sir.
Q. When were they taken?
A. They were taken that morning.
Q. That morning before you went down?
A. Before those men questioned me.
Q. You mean before these two officers questioned you?
A. Yes, sir.
Q. Where were those finger prints taken?
A. Down stairs.
Q. They took you downstairs and took your finger prints?
A. Yes, sir.
Q. The same two men who took you downstairs to take your finger prints, are they the same men you just detailed what happened?
A. No, sir; one man came up; he was in his shirt sleeves, [fol. 137] and he took me downstairs and took my finger prints.
Q. After he took your finger prints, what did he do?
A. Brought me back up stairs.

Q. The two men you have testified about mistreating you weren't present when your finger prints were taken, I take it?

A. No, sir.

Q. While you were down there and after Mr. McLeod and Mr. Rogers questioned you, did you tell them anything about having been mistreated?

A. Yes, sir.

Q. Was the statement you gave Mr. Rogers and Mr. McLeod entirely free and voluntary, or did what had happened that morning have anything to do with it?

A. I was really scared when I went down there after the man told me it would be mighty bad for me.

Q. Mr. Rogers and Mr. McLeod didn't see you down there that morning?

A. No, sir.

Cross-examination.

By Mr. McGowan:

Q. Who were those two men?

A. I don't know, sir.

Q. What did they look like?

A. Both of them were heavy set.

Q. Great big fellows?

A. Yes, sir.

Q. Weigh about 220?

A. I don't know, sir.

Q. Do you know Mr. Hines?

[fol. 138] A. No, sir.

Q. Do you know Mr. Sutherland?

A. No, sir.

Q. Mr. Bruton?

A. Yes, sir, I saw Mr. Bruton a few minutes ago.

Q. He didn't do anything to you at all?

A. No, sir.

Q. Mr. McLeod didn't do anything to you at all?

A. No, sir.

Q. When he arrested you that night and put you in jail?

A. No, sir.

Q. What were they doing taking your foot print upstairs in the jailer's office?

A. I don't know, sir.

Q. They took finger prints downstairs?

A. Yes, sir.

Q. You say they took it on a slip of paper and pencil—foot prints?

A. They had a slip of paper.

Q. They didn't take you downstairs?

A. No, sir.

Q. Where was the jailer?

A. He was sitting in there.

Q. Mr. Young?

A. I don't know who he was.

Q. What was he doing?

A. I don't recall, I am pretty sure he was in there.

Q. Just sitting there at the desk?

A. Yes, sir.

[fol. 139] Q. You say he took your foot print and then hit you in the stomach.

A. Yes, sir.

Q. Because you wouldn't say you did it?

A. Yes, sir.

Q. You never told you did it?

A. No, sir.

Q. Then he made you afraid?

A. Yes, sir.

Q. Why didn't you tell him you did it when he made you afraid?

A. He told me, he said, "If you go down stairs and say you didn't do it, it will be mighty bad for you."

Q. Weren't you more afraid then than when they took you downstairs?

A. No, sir, I wouldn't say so.

Q. When he was hitting you in the stomach you weren't afraid enough to tell him?

A. No, sir.

Q. That afternoon you got afraid again?

A. Yes, sir.

Q. The man who hit you in the stomach didn't make you afraid?

A. What he had said made me afraid.

Q. Why didn't you tell him then you did it if you were afraid?

A. Sir?

Q. Why didn't you tell him then you did it if you were afraid, if he hit you in the stomach? Why did you want to

wait until that afternoon when somebody was treating you nice to be afraid?

[fol. 140] By Mr. Wells: We don't think that is competent.

By the Court: Overrule the objection.

By Mr. McGowan (Continuing):

Q. You say he hit you in the stomach and you were afraid?

A. Yes, sir.

Q. You never would tell him you did it?

A. No, sir.

Q. That afternoon there were two men who were treating you very nice?

A. Yes, sir.

Q. And while they were treating you very nice you became afraid and told them about it, is that what you tell the Judge?

A. Would you say that again?

Q. I say, when the man hit you in the stomach you were afraid, that is right?

A. Yes, sir.

Q. But you were not afraid enough to tell them you did it, isn't that correct?

A. Yes, sir, that is right.

Q. Then that afternoon, when you were down talking to Captain Rogers, who was treating you nice, then you got afraid and told it?

A. I didn't tell him I did it.

Q. You told him you did it, didn't you tell Captain Rogers you did it? Didn't you go over the details of it?

A. No, sir. He was asking me some questions. I don't [fols. 141-151] know what all he asked and all I said, but I didn't admit I did it.

Q. You went over the details with him?

A. No, sir.

Q. About going to more than one house?

A. I don't know all he said, but I didn't admit it.

Q. You went through the details, about going to one house, looking in the window, some girls saying something to you, and then going to the second house above there?

A. No, sir.

Q. Opening the screen, striking the girl, and then going back down south to Ash Street? Didn't you go over all of those details?

A. No, sir.

Q. Told him about the bottle?

A. No, sir.

Q. Told him where the bottle was?

A. I didn't admit at any time I did it.

Q. Didn't you outline all of those details I have just outlined to you?

A. No, sir.

Q. Didn't tell him where he could find the bottle?

A. No, sir.

Q. What kind of bottle it was?

A. No, sir.

Q. Didn't tell him what you did to the screen?

A. No, sir.

Q. Didn't tell him how you opened it?

A. No, sir.

* * * * * * * *

[fol. 152] J. A. Young having been first duly sworn, was called as a witness by the State of Mississippi, and testified, as follows:

Direct examination.

By Mr. McGowan:

Q. You are Mr. Young, what are your initials?

A. J. A.

Q. Are you the City Jailer?

A. Day Jailer.

Q. Were you the day jailer on the 7th of June, 1944?

[fol. 153] A. Yes, sir, I suppose so; I don't remember that exact date.

Q. Were you employed as jailer at that time?

A. That is right.

Q. As day jailer?

A. Yes, sir.

Q. What time did you come on every morning?

A. Five o'clock.

Q. What time did you get off every evening?

By the Court (Continuing):

Q. Is there any way for you to determine whether you were on duty from your records?

A. May I say a word? At that date I could have been in Memphis in the hospital with my wife.

Q. Who would have been on duty during the day while you were gone?

A. I couldn't say.

Q. Is there a record in the Police Department to show who was on duty?

A. I suppose so.

Q. Where is Mr. Rogers?

By Mr. McGowan (Continuing):

Q. Do you remember the date you were out of town about that time?

A. No, sir, I don't.

Q. Were you out of town any time about that time?

A. I was out a number of times; I don't remember the exact date.

Q. Do you remember this defendant, Albert Lee, being booked over there as a prisoner?

[fol. 154] A. His face is familiar, yes, sir.

Q. Do you reme-ber—have you any recollection of his case having been booked there?

A. I don't believe I do, sir.

Q. State whether or not this defendant was ever brought into your office by two detectives?

A. He could have been, yes, sir.

Q. State whether or not this occurred then—that he was brought into your office by the two detectives——

By Mr. Wells: Object to this type of examination, it is leading.

By the Court: Don't lead the witness.

By Mr. McGowan (Continuing):

Q. I will ask you if anything was ever done to him in your office?

A. I would say not.

Q. In your presence?

A. No, sir.

Q. Was he ever struck by anybody in your presence at any time?

A. No, sir.

By Mr. McGowan: That is all.

Cross-examination.

By Mr. Wells:

Q. Mr. Young, you have no independent recollection of this boy being in jail at all, do you?

A. Not on any specific date.

[fol. 155] Q. At any time do you have any independent recollection of him being there?

A. His face is familiar.

Q. In other words, you see that negro sitting over there and to you his face is familiar?

A. That is right.

Q. But you don't have any independent recollection of whether you saw him in the jail or somewhere else?

A. He has been in jail there, yes.

Q. You have an independent recollection of having seen him in jail?

A. His face is familiar.

Q. That is what I mean, not any more than his face is familiar?

A. That is right.

Q. You don't remember the circumstances about him having been placed in jail?

A. I don't believe I do, Mr. Wells.

Q. I will ask you if any person has ever been hit in your presence by the police officers in jail?

A. Not unmercifully, no, sir.

Q. I don't mean unmercifully, Mr. Young. I mean if any person has been hit?

By Mr. McGowan: Object; that hasn't anything to do with the case.

By the Court: I will let him answer.

By Mr. Wells (Continuing):

Q. I will ask you if any person has ever been hit in the [fol. 156] jail there in your presence?

A. Nothing more than in self-protection, sir.

Q. Don't misunderstand. I am not criticizing the officers for it, but there have been prisoners who have been hit by officers up in the jail?

A. Not in my office.

Q. Not in your office—sir? You didn't answer?

A. Ask the question again.

Q. I say—how long have you been jailer?

A. Three years.

Q. During those three years, I will ask you—I don't want to know who—I will ask you if there have been prisoners who have been struck by police officers in your office?

A. Nothing more than in self-protection.

Q. There have been prisoners who have been struck by officers?

A. Just what do you mean by being struck?

A. Hit in any way with hands, slapped, hit with their fists, or hit in any way?

A. I will say this, that that is something I don't allow in the office there in the jail, prisoners to be hit.

Q. I understand that; and if an officer did that you would call him down?

A. That is right.

Q. If it was done in your presence?

A. That is correct.

Q. But there have been prisoners who have been struck or slapped in the jail by officers?

A. That is right.

[fol. 157] Q. You have no independent recollection, as I understand it, of this boy being in jail except that his face is familiar?

A. That is right.

Q. You don't have any knowledge or idea now when he was in the city jail, do you?

A. I wouldn't say.

Q. You are not positive now that you even were on duty on the 7th of June of 1944?

A. No, sir.

Q. Mr. Young, when a prisoner is put in jail, if he is booked on a charge for investigation, any of the police officers have the right and the privilege of coming up in the jail and talking to them or questioning them?

A. That is right.

Q. You don't make any question of that at all when they come up to see them?

A. No.

Q. In other words, if one of the police officers should come to the jail and say he wanted to see a certain prisoner, he could see him without any questions asked?

A. Yes, sir.

Q. There are times when officers come up and talk to prisoners when you are busy about your duties there in the jail and you pay no attention to them? Don't you at times?

A. It is possible.

Q. What I mean is, it is not part of your duty to supervise and oversee and watch the officers when they are talking to prisoners, but if they wanted to talk to a prisoner, they go on and talk to the prisoner, and you don't question their actions?

[fol. 158] A. They usually carry them downstairs.

Q. They usually carry them downstairs, but there are times when they talk to them up there?

A. Yes, sir.

Q. You don't, of course, question the authority of the officers—they are police officers just like you are a police officer?

A. How do you mean that?

Q. I mean by that, Mr. Young, this: If on June 7, 1944, you had been on duty or were on duty and this boy here was a prisoner in the jail and two officers of the detective bureau would come up stairs to talk to him, they would have a perfect right to go do that?

A. That is right.

Q. They could do that in your presence or out of your presence, whichever happened to be convenient at the time?

A. That is right.

Q. There are times when you are called on to leave the upstairs of the jail and go down and have business in the sergeant's office and leave the detective or other officers up there, isn't there?

A. That is right.

Q. Or there may be times when you would have to go into the kitchen or back into the jail and leave those officers with prisoners they were talking to?

A. It is possible, sir.

Q. Isn't it often done, Mr. Young?

A. Occasionally, yes.

Q. In other words, when an officer, a police officer, comes up into the jail to question a prisoner, you are not under

[fol. 159] instructions and it is not a part of your duty to remain present all of the time to see what goes on, is it?

A. Is it necessary for me to answer that?

By the Court: Yes, sir, it is necessary to answer all of these questions.

A. I thought he was questioning me on this particular case.

By the Court: Yes, all of the questions.

A. Ask the question again, please.

By Mr. Wells (Continuing):

Q. I say, Mr. Young, when a police officer, detective, or uniformed man, comes up into the jail to question a prisoner up there, it is not part of your duty and you are not instructed to remain present all of the time that questioning is going on, are you?

A. As much as possible.

Q. Who gives you those instructions?

A. The Chief.

Q. To remain present as much as possible?

A. That is right.

Q. So long as it does not interfere with your regular jailer's duties?

A. That is part of the duties.

Q. But there are occasions when you are mighty busy up there?

A. Yes, sir.

Q. It is a full time, busy man's job?

A. That is right.

Q. And there are occasions when officers question prisoners up there that you can't be right there all of the time, aren't there?

[fol. 160] A. It is possible, yes, sir.

Q. I say there are times when that is the situation, aren't there?

A. Do I stay with you when you come up to talk——

By the Court: That isn't the question.

(The stenographer reads the last question.)

A. It seems the questions leads to the duties.

By the Court: Yes, sir, that is what he is inquiring into.

(The stenographer reads the last two questions:

"Q. And there are occasions when officers question prisoners up there that you can't be right there all of the time, aren't there?

"A. It is possible, yes, sir.

"Q. I say there are times when that is the situation, aren't there?")

A. That is correct, sir.

By Mr. Wells:

Q. I am not suggesting, I don't mean——

A. —You know yourself you have been up there and I try to cooperate one hundred percent.

By the Court: The point is, Mr. Young, I have to know the answer to the question—not what Mr. Wells know-, or anybody else says.

By Mr. Wells: I would like to say this for the benefit of the record: There is no attempt to suggest Mr. Young is not a very diligent jailer and on the job. He is certainly a [fol. 161] very diligent, excellent jailer and on the job.

By the Court: That is true but he was confused as to whether he was required to answer the questions.

A. Beg your pardon. I don't mean to not answer your questions correctly, but I may become a little confused on a case like this. This is my first time.

By the Court: That is all right.

A. What I couldn't understand was the question concerning the duties over there.

By the Court: It did have a bearing on the matter we are now investigating, that is the reason he is permitted to ask these questions.

By Mr. Wells: That is all.

By the Court: Mr. Young, let me ask you a question.

A. Yes, sir.

Q. Has this defendant, this boy sitting over there, ever at any time been in your office with two other officers and been struck there in your office?

A. I would say not, sir.

Redirect examination.

By Mr. McGowan:

Q. You stated to Mr. Wells you had never seen any prisoners struck except—what did you say—self-preservation?
A. I said self-defense, did I not?
Q. Except in self-protection, what did you mean by that?
[fol. 162] A. Well, sir, if you were over there and saw, you would find out we have to manhandle a few to protect ourselves.
Q. Do they ever hit the officers first?
A. Very often, sir.
Q. Is that what you mean by self-protection?
A. That is right, sir.

By Mr. McGowan: That is all.

Recross-examination.

By Mr. Wells:

Q. You get a drunk over there once in a while and it is a regular bear fight to get him in there?

(No answer.)

Redirect examination.

By Mr. McGowan:

Q. I will ask you, Mr. Young, if you keep a record which will disclose the days that you are on duty?
A. Me.
Q. Yes.
A. I do not, no, sir.
Q. What is this you have in your hand?
A. That is the police record that is kept downstairs; I don't keep that record.
Q. I will ask you if the Police Department keeps a record?
A. The Police Department does keep the record, yes, sir.
Q. As to what policeman or police officer or jailer signs on at that time.
A. That is right.
Q. What are your initials?
[fol. 163] A. J. A.
Q. What is your badge number?

A. 208.

Q. I will ask you if this is the record kept over there in the Police Department?

A. That is right.

Q. I will ask you to examine that and see whether or not you were on duty on the 7th of June, 1944?

A. I signed that, yes, sir.

Q. You signed that in your own handwriting?

A. Yes, sir.

Q. I will ask you were you on duty on June 7, 1944?

A. I must have been.

By Mr. McGowan: That is all.

(Witness excused.)

* * * * * * *

[fols. 164-292] ORDER ADMITTING TESTIMONY AND OVERULING OBJECTION

By the Court: This testimony is admissible, gentlemen. The objection is overruled.

* * * * * * *

[fols. 293-296] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

No. 13158

STATE

vs.

ALBERT LEE

INSTRUCTION No. 1—REFUSED—Filed December 14, 1945

The Court Instructs the jury to find the defendant not guilty.

[fol. 297] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

No. 36,278

ALBERT LEE, Appellant,

versus

STATE OF MISSISSIPPI, Appellee

ASSIGNMENT OF ERRORS—Filed September 23, 1946

Comes now the defendant in the above styled and numbered cause, Albert Lee, by his attorney, and assigns as errors in the judgment of the Circuit Court of the First Judicial District of Hinds County, Mississippi, convicting and sentencing him of assault with intent to rape, the following, to-wit:

I

The Court erred in overruling the motion by the accused, at the conclusion of the State's evidence-in-chief, to exclude the State's testimony and dismiss and discharge the accused, because the State failed to prove the corpus delicti aliunde the purported confession of the accused.

II

The Court erred in refusing to grant the peremptory instruction, as requested by the accused, at the close of the trial, directing the jury to return a verdict of not guilty, because the State wholly failed to prove the corpus delicti aliunde the purported confession of the accused, the said [fol. 298] instruction being marked "Instruction No. 1—Refused," and filed with the record in this case, and further the State's evidence was insufficient to support a conviction of assault with intent to rape.

III

The court erred in overruling the motion of the accused to exclude the testimony of Miss Nadine Wade for the State, because such testimony was clearly incompetent and immaterial, and was very prejudicial to the rights of the accused.

IV

The court erred in admitting the testimony of J. R. McLeod and B. Frank Rogers concerning the purported confession because such purported confession had been extorted by duress, fear, threats, and physical violence.

V

The court erred in permitting the State to reopen its case and to admit the testimony of Bessie Glade Dubois and Mrs. Dee (Clara) Dubois, as to the previous chaste character of Bessie Glade Dubois, after the State and the Accused had both rested, after the State had put on rebuttal testimony, both sides having thereupon again rested, and after the instructions had been prepared, submitted to the court, and some of the instructions had been approved by the court; such procedure was clearly an abuse of discretion by the trial judge, and was prejudicial to the rights of the accused herein.

VI

The verdict of the jury was clearly contrary to the instructions of the Court that announce the law governing the issues involved in this case, and such verdict of the jury [fol. 299] shows that the jury wholly disregarded such proper instructions in arriving at its verdict; further, the verdict of the jury is contrary to the overwhelming weight of the evidence, and is not supported by any competent, believable, credible evidence.

VII

The court erred in passing judgment and in sentencing the defendant as having been guilty of the offense charged because the proof offered could sustain only a misdemeanor.

VIII

The verdict of the jury was clearly contrary to the law and the evidence.

IX

The court erred in overruling the motion of the accused to exclude the testimony of Mrs. Dee (Clara) Dubois and Bessie Glade Dubois, because such evidence was not in rebuttal, but was original evidence, and was offered after

the State and the accused had twice rested their cases, and after instructions had been prepared, submitted and partially approved.

X

The court erred in excluding evidence offered on behalf of the accused, as shown by the stenographer's notes here exhibited to the court, and to which rulings of the Court the accused duly excepted and his exceptions were duly allowed.

XI

The court erred in admitting evidence offered on behalf of the State over the objections duly made by the accused, as shown by the stenographer's notes here exhibited to the Court, and to which rulings of the Court the accused duly excepted and his exceptions were duly allowed.

[fol. 300] XII

And for other reasons to be shown on the hearing hereof.

Wherefore, for the causes aforesaid, the verdict and judgment should be reversed and set aside, and appellant discharged or a new trial granted.

Respectfully submitted, Albert Lee, Appellant, by Will S. Wells, His Attorney.

CERTIFICATE

STATE OF MISSISSIPPI,
County of Hinds:

I, the undersigned Will S. Wells, attorney for Albert Lee, Appellant, in the above entitled and numbered cause, hereby certify that I have this day mailed, postage prepaid, a true copy of the above and foregoing assignment of errors to the Honorable Greek L. Rice, Attorney General of the State of Mississippi, New Capitol Building, Jackson, Mississippi.

This, the 11th day of October, A. D. 1946.

Will S. Wells.

[fol. 301] IN THE SUPREME COURT OF MISSISSIPPI

No. 36,378

In Banc; 15956, Alexander, J.

ALBERT LEE

vs.

STATE

OPINION—Filed February 24, 1947

The appellant was convicted of an assault with intent to ravish a female of previous chaste character, under Code 1942, Section 2361. The assigned errors which we shall discuss are: 1) the failure of the State to establish the corpus delicti; 2) the admission of a confession by accused; 3) admission of certain testimony; 4) the granting of the State's motion to re-open its case after both sides had rested; and 5) sentence under the wrong statute.

The following facts were testified to by witnesses for the State. The victim was awakened by severe blows upon her head evidently from an empty soft drink bottle. The screen window had been forced open and she saw a man at the window in the act of escaping. Neighbors saw a man leaving the premises at the time of the assault and the officers soon thereafter arrested appellant nearby and found him panting and out of breath as if he had been running and with his shoes and the lower part of his trousers wet.

Appellant was placed in jail and on the afternoon of the following day he was interrogated by two officers to whom [fol. 302] he confessed that it was he who had broken in the room and struck the victim three times while she was asleep in bed; that he had watched and waited outside while she prepared for bed, and that his intent was to ravish. There is no question whether any coercion was used by these officers, but, on the contrary, defendant testified they had 'been nice to him' and had explained that his statement would be used against him and that such statement would be wholly voluntary. The details of the confession had never been suggested or known by anyone other than the defendant. When he was requested to sign the statement after its reduction to writing, he refused to do so stating that during the morning two officers in the room and pres-

ence of the jailer 'had treated him kind of bad'. The interview was thereupon closed and his signature was not insisted upon.

The defendant testified that during the morning referred to, two plain clothes men had brought him to the office of the jailer and demanded that he confess the crime, and struck him twice with the warning that if he went 'down stairs and said he didn't do it, it will be mighty bad for you.' The said detectives were not introduced and the jailer denied that this incident occurred. The trial judge thereupon admitted the confession into the record.

The conduct of the two detectives, if true, would of course be indefensible and would warrant and receive our condemnation. Yet the issue of fact as well as credibility was for the trial judge upon such preliminary qualification, and we are not willing to disturb his conclusion. Street v. State, 26 So. (2d) 678.

[fol. 303] The confession being admitted, we are of the opinion that it was available to support the testimony adduced aliunde in establishing the corpus delicti. There was no room for douht that the room had been buglariously entered and the assault and battery committed. The purpose of such entry and assault is necessarily provable circumstantially. Here the existence of a criminal intent is clear and a specific intent to ravish is, at least, consistent with the proven facts and reasonably inferable. A burglarious breaking is evidence of some unlawful purpose, Thompson v. State, 124 Miss. 463, 86 So. 811; Moseley v. State, 92 Miss. 250, 45 So. 833. In the former an inference of intent to ravish was held justified, while in the latter the finding of a motive of theft rather than rape was approved by the Court, yet such issue involved was one of guilt and not of the corpus delicti. The direct proof was sufficient to admit the confession in aid of proof as to the body of the crime. Keeton v. State, 175 Miss. 631, 647, 167 So. 68; Gross v. State, 191 Miss. 383, 2 So. (2d) 818; Phillips v. State, 196 Miss. 194, 16 So. (2d) 630.

There was no error in admitting the testimony of Miss Nadine Wade for the State. Her testimony was that she saw, about the time of the assault, someone dressed in dark trousers 'dart around the corner' of her house, which was two doors away from that of the victim. Such testimony was either relevant as incriminating or was entirely harmless. Hence its admission was not error.

After both sides had rested the State moved to reopen to introduce testimony it had overlooked, in the direct examination of the victim and her mother, to establish [fol. 304] previous chastity. The trial court did not abuse its discretion in allowing this to be done. Ample opportunity for cross-examination was allowed. This proof was an element of the accusation of which defendant had been duly informed. Roney v. State, 167 Miss. 827, 150 So. 774; Brown v. State, 173 Miss. 542, 158 So. 339 (rev. on other grounds, 80 L. Ed. 682); Clark v. State, 181 Miss. 455, 180 So. 602. Riddick v. State, 72 Miss. 1008, 16 So. 490, is distinguishable upon its facts, and contained other egregious errors requiring reversal.

The mere probability that appellant could have been prosecuted and sentenced under Code 1942, Section 2011, for assault and battery with a deadly weapon with intent to ravish or under Section 2017 for an attempt, is met by the fact that he was indicted, tried, convicted and sentenced under Section 2361.

Affirmed.

[File endorsement omitted.]

[fol. 305] IN THE SUPREME COURT OF MISSISSIPPI

36278

ALBERT LEE

vs.

STATE

JUDGMENT—February 24, 1947

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Hinds County and this court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause at the November 1945 Term—a conviction of assault with intent to rape and a sentence to 18 years in the State Penitentiary—be and the same is hereby affirmed. It is further ordered and adjudged that the County of Hinds do pay the costs of this appeal to be taxed, etc.

[fol. 306] IN THE SUPREME COURT OF MISSISSIPPI

No. 36,278

In Banc: 16007

ALBERT LEE

vs.

STATE OF MISSISSIPPI

McGEHEE, J.:

OPINION ON SUGGESTION OF ERROR—Filed April 14, 1947

We are urged to reconsider the question of whether or not the confession of the accused, which was testified to by the officers, was made freely and voluntarily. The proof on behalf of the State on that issue is that a statement was made by the accused in the presence of officers McLeod and Rogers, which was reduced to writing, but which he refused to sign, stating that "two men had treated him kind of bad during the forenoon" of that day; that thereupon officer Rogers stated that he "would not take a statement under those conditions from anybody," and the accused was then returned to his cell. The written confession, not having been signed, the details of the same were testified to by the officers at the trial.

The accused testified that these two men who had interviewed him during the forenoon were plain clothese men, and that they struck him at least twice when he refused to admit that he had committed the crime charged against him. [fol. 307] He further testified that after they had thus treated him, they said; "If you go downstairs and say you did not do it, it will be mighty bad for you."

There was no testimony to the effect that he was mistreated by officers McLeod and Rogers on the occasion when they took his statement down in writing. The trial judge was zealous in his effort to try to ascertain the truth as to whether or not this confession was made freely and voluntarily, and he caused the jailer to be called as a witness, whom the accused said was present at the time he was mistreated, and the jailer testified in substance that while he had no distinct recollection of the occasion, or whether he was even present at the time the interview was had, he was

positive that no one had struck the accused on the occasion complained of or at any other time in his presence, although he admitted that sometimes prisoners were assaulted but "not unmercifully." However, he was not asked as to whether one of the two men who were said to have mistreated the prisoner made the statement to him that "If you go downstairs and say you did not do it, it will be mighty bad for you." Therefore the statement of the accused in that behalf is wholly undisputed in this record.

However, the accused steadfastly testified, both upon the hearing before the trial judge in the absence of the jury and on the trial on the merits before the jury, that he did not in fact admit to officers McLeod and Rogers that he had committed the crime. That is to say, he denied having made to them a confession of the details about which they testified. Therefore, his contention here that the confession testified to by the officers was not made at all, and [fol. 308] his contention that such confession was not freely and voluntarily made on account of the previous mistreatment accorded to him prior thereto, cannot both be true. As was said in the case of Upshur v. Commonwealth, 197 S. E. (Va.) 435, "If the defendant made no confession, it is evident that neither fear nor favor moved him. If he did make the confession, it is equally clear that his testimony upon trial was false. The successive positions of the defendant are not only inconsistent with each other, but they are mutually contradictory. To sustain his subsequent contention, he asks us to disregard his evidence, and accept as true the evidence of the officers that a confession was made, but to refuse to accept their evidence that it was voluntarily made."

If the accused had not denied having made any confession at all, we would feel constrained to reverse the conviction herein because of the fact that his testimony as to the threat made to him during the forenoon by the plain clothes men is wholly undisputed, the jailer not having been asked about this threat, and having testified only that he was not struck by anyone in his presence after his arrest for this crime. But, we think that one accused of crime cannot be heard to say that he did not make a confession at all, and at the same time contend that an alleged confession was made under the inducement of fear. We do not mean by this to say that one who claims to have been acting under fear when he makes statements which involve his guilt of crime

cannot be heard to dispute that *some* of the statements embodied in an alleged confession were not actually made as disclosed by a written statement which he may or may not [fol. 309] have signed, or as testified to by the officers as having been orally made, but we limit this holding to a case where an accused denies having made any statements in an alleged confession, and at the same time contends that he was acting under fear when he made them.

For the reasons hereinbefore stated, we are of the opinion that the suggestion of error should be, and the same hereby is, overruled.

Suggestion of error overruled.

[File endorsement omitted.]

[fol. 310] IN THE SUPREME COURT OF MISSISSIPPI

—. 36278

ALBERT LEE

vs.

STATE

ORDER OVERRULING SUGGESTION OF ERROR—April 14, 1947

This cause this day came on to be heard on the suggestion of error filed herein and this court having sufficiently examined and considered the same and being of the opinion that the same should be overruled doth order and adjudge that said suggestion of error be and the same is hereby overruled.

[fol. 311] [File endorsement omitted]

[fol. 312] IN THE SUPREME COURT OF THE UNITED STATES

ALBERT LEE, Appellant,

vs.

STATE OF MISSISSIPPI, Appellee

Petition for Appeal, Statement, Assignments of Error, and Prayer for Reversal—Filed April 17, 1947

PETITION FOR APPEAL

Being aggrieved by a judgment of the Supreme Court of the State of Mississippi, affirming a verdict and judgment of the Circuit Court of the First Judicial District of Hinds County, Mississippi, convicting the appellant on a charge of assault with intent to rape and sentencing him to eighteen (18) years in the Mississippi State Penitentiary, which judgment was rendered by the said Supreme Court on February 24, 1947, and which judgment was made final by the action of the said Supreme Court in overruling the Suggestion of Error of the appellant on April 14, 1947, appellant prays that an appeal to the Supreme Court of the United States be allowed herein, that an order be granted permitting such appeal with supersedeas and stay of execution, and that the appeal be permitted *in forma pauperis*, pursuant to the provisions of 28 U. S. C. A. Sections 832 et seq.

STATEMENT

This case is one in which is challenged the action of the Circuit Court of the First Judicial District of Hinds County, [fol. 313] Mississippi in admitting, over the objection of appellant, certain alleged confessions obtained by duress and under coercion from the said appellant contrary to the equal protection and due process clauses of the 14th Amendment of the Constitution of the United States, as construed in the case of *Brown et al.* v. *State of Mississippi*, 297 U. S. 278, 80 L. Ed. 682, and the action of the Supreme Court of the State of Mississippi in affirming the conviction and judgment of the Circuit Court aforesaid, the opinion of the Supreme Court of the State of Mississippi being rendered on February 24, 1947 and said opinion is attached as Appendix A to the jurisdictional statement filed herein, and is reported in — Miss. —, 29 So. (2d) 211.

A Suggestion of Error was filed in the Supreme Court of the State of Mississippi in due course under the rules thereof, and was overruled on April 14, 1947. The opinion of the Supreme Court of the State of Mississippi overruling the Suggestion of Error is attached as Appendix B to the jurisdictional statement filed herein and reported in — Miss. —, 29 So. (2d) —.

The execution of the sentence of the appellant to eighteen (18) years in the Mississippi State Penitentiary will become effective upon execution of the mandate of the Supreme Court of Mississippi.

The order and judgment of affirmance by the said Supreme Court of Mississippi became a final judgment on April 14, 1947, the date of the overruling of the Suggestion of Error.

ASSIGNMENT OF ERROR

Now comes the appellant in the above cause and files herewith, together with said petition for appeal, these assignments of error and say—that there are errors committed by the courts below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the Supreme Court of the United States, make—the following assignments:

I

The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the trial court should have sustained appellant's objections to the introduction of evidence obtained by alleged confessions obtained from the appellants by threats, duress, coercion and violence.

[fol. 314]

II

The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the trial court should have entered a directed verdict, there being no evidence to sustain the charges alleged in the indictment at the close of the state's evidence.

III

The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the trial court

should have granted the peremptory instruction requested by the appellant at the close of all the evidence.

IV

The Supreme Court of Mississippi erred in affirming the judgment of the trial court in that the trial court in refusing to exclude the incompetent evidence of the alleged confession obtained by force, violence, coercion, duress and threats, abridged appellant's rights under the equal protection and due process clauses of the 14th Amendment — Constitution.

V

The Supreme Court of Mississippi erred in entering its judgment and the opinion affirming the action of the trial court, in sustaining the conviction of the appellant because the conviction was based entirely upon alleged confession obtained from the appellant by threats, duress, coercion and violence upon the appellant by public officials, and thereby denied to the appellant the rights and privileges as a citizen guaranteed under the equal protection and due process clauses of the 14th Amendment of the United States Constitution.

VI

The Supreme Court of Mississippi erred in failing to hold that the confession knowingly used on the part of the state in its prosecution thus illegally obtained from appellant through force and violence, denied equal protection and due process of law to the appellant.

VII

The judgment and opinion of the Supreme Court of the State of Mississippi are a denial of equal protection and due process of law, contrary to the requirements of the 14th Amendment to the Constitution of the United States.

[fol. 315]

VIII

The Supreme Court of Mississippi erred in refusing to reverse the lower court for having admitted the alleged confession upon the ground that the appellant denied that he had ever made the confession.

PRAYER FOR REVERSAL

For and on account of the above errors, the appellant prays that the said judgment of the Supreme Court of the State of Mississippi, be reviewed by the Supreme Court of the United States, that such judgment be reversed, and that judgment be rendered in favor of the appellant, or if mistaken, that the appellant be accorded a new trial.

Respectfully submitted, Forrest B. Jackson, Attorney for Appellant, by Forrest B. Jackson, of Counsel.

[fol. 316] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

ALBERT LEE, Appellant,

vs.

STATE OF MISSISSIPPI, Appellee

ORDER ALLOWING APPEAL—Filed April 17, 1947

The appellant in the above entitled cause has prayed for the allowance of an appeal to the Supreme Court of the United States from the judgment made and entered by the Supreme Court of the State of Mississippi on February 24, 1947, affirming the judgment of the Circuit Court of the First Judicial District of Hinds County, Mississippi, which judgment was made final by the Supreme Court of the State of Mississippi on April 14, 1947 overruling the appellant's Suggestion of Error, the said cause being entitled *Albert Lee vs. State of Mississippi.*

It appearing that the appellant in the Assignments of Error and in the briefs and argument in said cause contended that the conviction of the said appellant was based upon alleged confession unlawfully and unconstitutionally obtained through threats, duress, fear and coercion, and that the use of the same as the sole basis to sustain a submission of said cause to the jury abridged and denied appellant the rights to equal protection and due process of law guaranteed by the 14th Amendment of the Constitution of the United States, which contentions were overruled by the decisions and judgments of the Supreme Court of the State of Mississippi.

It appearing that appellant has presented and filed a petition for appeal to the Supreme Court of the United States, a statement, assignments of error, prayer for re-
[fols. 317-351] versal and jurisdictional statement, together with affidavit of appellant that he is a citizen of the United States and a poor person entitled to prosecute his appeal to the Supreme Court of the United States in forma pauperis, all within three months from the date that said judgment of the Supreme Court of Mississippi became final by overruling of the suggestion of error on April 14, 1947 pursuant to the statutes and the rules of the Supreme Court of the United States in such cases made and provided.

It is now hereby ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Mississippi, as provided by law; and,

It is further ordered that the clerk of the Supreme Court of Mississippi shall prepare and certify to the transcript of the record, proceedings and judgments in said cause, in accordance with the praecipe filed herein, and transmit the same to the Supreme Court of the United States within twenty days from this date; and,

It is further ordered, and the court does find, that the appellant is a citizen and poor person, unable to prepay cost or to give security therefor, and that he is entitled to prosecute his said appeal to the Supreme Court of the United States in forma pauperis.

It is further ordered that the execution of the judgment of the Circuit Court of the First Judicial District of Hinds County, Mississippi, as affirmed by the Supreme Court of Mississippi, be stayed and held in abeyance until this appeal is reviewed and acted upon by the Supreme Court of the United States.

Ordered and adjudged, this the 16th day of April, A. D., 1947.

Sydney Smith, Chief Justice of the Supreme Court of the State of Mississippi.

[fol. 352] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 353] IN THE SUPREME COURT OF THE UNITED STATES

DEFINITE STATEMENT OF POINTS RELIED UPON AND DESIGNATION OF PARTS OF RECORD NECESSARY FOR CONSIDERATION PURSUANT TO RULE 13, PARAGRAPH 9—Filed May 16, 1947

May It Please the Court:

The appellant, Albert Lee, pursuant to the provisions of Rule 13, Paragraph 9 of the Revised Rules of the Supreme Court of the United States hereby gives a definite statement of points on which he intends to rely and a designation of the part of the record herein necessary for the consideration of such points. The appellant also refers to his petition for appeal, assignment of errors, prayer for reversal, and jurisdictional statement herein before filed.

Definite Statement of Points on Which Appellant Intends to Rely

I

The confession obtained from the appellant under the circumstances set forth in the statement of jurisdiction, and as shown by the record, was obtained by duress and through [fol. 354] coercion, and was not freely and voluntarily made, and, therefore, should not have been admitted in evidence, and to admit it as evidence was a denial of the equal protection and due process clauses of the 14th Amendment to the Constitution of the United States.

Malinski vs. *State of New York*, 65 S. Ct. 781, 324 U. S. 401, 89 L. Ed. 1029.

Ashcraft vs. *State of Tennessee*, 322 U. S. 143, 88 L. Ed. 1192.

Ward vs. *State of Texas*, 62 S. Ct. 1139, 316 U. S. 547, 86 L. Ed. 1663.

Lisenba vs. *State of California*, 62 S. Ct. 280, 314 U. S. 219, 86 L. Ed. 166.

Chambers vs. *State of Florida*, 60 S. Ct. 472, 309 U. S. 227, 84 L. Ed. 716.

Brown vs. *State of Mississippi*, 297 U. S. 278, 80 L. Ed. 682.

II

The decision of the Supreme Court of Mississippi is in itself a denial of the equal protection and due process of

law clauses of the 14th Amendment to the Constitution of the United States. See authorities cited above.

III

The appellant's denial of having made the coerced confession does not bar him from urging that the state's use of the confession for the purpose of obtaining his conviction was a denial of due process of law.

White vs. *Texas*, 310 U. S. 530, 84 L. Ed. 1342, 60 S. Ct. 1032.

Ashcraft vs. *State of Tennessee*, 322 U. S. 143, 88 L. Ed. 1192.

Designation of Parts of Record Necessary for Consideration

The appellant respectfully designates the following parts of the typewritten record sent up from the Supreme Court of the State of Mississippi, which he deems necessary for the consideration of the points relied upon:

1. Assignment of errors in the Supreme Court of Mississippi (typewritten transcript 297-300).

2. Opinion of the Supreme Court of Mississippi (type-[fol. 355] written transcript 301-304).

3. Judgment of the Supreme Court of Mississippi (typewritten transcript 305).

4. Opinion of the Supreme Court of Mississippi on Suggestion of error (typewritten transcript 306-309).

5. Judgment of the Supreme Court of Mississippi overruling the suggestion of error (typewritten transcript 310).

6. Petition for appeal to the Supreme Court of the United States, assignments of error, and prayer for reversal (typewritten transcript 311-315).

7. Order allowing appeal with stay of execution (typewritten transcript 316-317).

8. Statement disclosing jurisdictional basis for review and other matters required by Rule 12, Section 1, as amended (typewritten transcript 325-349).

9. Notice calling appellee's attention to Paragraph 3 of Rule 12 (typewritten transcript 321-322).

10. Testimony of the following witnesses (typewritten transcript 119-164):

(a) J. R. McLeod (typewritten transcript 119-126);

(b) Frank Rogers (typewritten transcript 126-132);

(c) Albert Lee (typewritten transcript 132-141);

(d) J. A. Young (typewritten transcript 152-163).

11. The ruling of the trial court admitting the confession and overruling appellant's objection thereto (typewritten transcript 164).

12. Peremptory instruction requested by the appellant and refused by the trial court (typewritten transcript 293).

Appellant respectfully requests that the foregoing be printed by the clerk for consideration on appeal.

Respectfully submitted, Albert Lee, Appellant, Forrest B. Jackson, Attorney for Appellant, by Forrest B. Jackson, of Counsel.

[fol. 356] I, Forrest B. Jackson, of counsel for appellant, hereby certify that I have this day personally served a true and correct copy of the above and foregoing statement of points relied upon and designation of the parts of the record by delivering a true and correct copy thereof to the Honorable Greek L. Rice, Attorney-General, for the State of Mississippi, he being counsel of record for appellee, the State of Mississippi.

This the 10th day of May, 1947.

Forrest B. Jackson, of Counsel.

Acceptance of Service

The undersigned, Greek L. Rice, Attorney-General of the State of Mississippi, does hereby acknowledge the receipt, and accept the service of appellant's definite statement of points relied upon and designation of parts of the record necessary for consideration pursuant to Rule 13, Paragraph 9.

Greek L. Rice, by John Kuyhendall, Jr., Assistant Attorney General, Attorney-General, State of Mississippi.

May 10, 1947.

[fol. 356a] [File endorsement omitted.]

[fol. 357] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—June 16, 1947

On Consideration of the motion for leave to proceed further herein in forma pauperis,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

[fol. 358] SUPREME COURT OF THE UNITED STATES

Appeal from the Supreme Court of the State of Mississippi

ORDER DISMISSING APPEAL AND GRANTING CERTIORARI—June 16, 1947

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of Mississippi, and was duly submitted.

On consideration whereof, It is now here ordered by this Court that the appeal herein be, and the same is hereby, dismissed for the want of jurisdiction.

Treating the papers whereon the appeal was allowed as a petition for writ of certiorari as required by Sec. 237(c) of the Judicial Code as amended, 28 U. S. C., Sec 344(c), certiorari is granted, and the case is assigned for argument immediately following No. 1123, Haley vs. State of Ohio.

Endorsed on Cover: In forma pauperis. Enter Forrest B. Jackson. File No. 52,241 Mississippi, Supreme Court, Term No. 91. Albert Lee, Petitioner, vs. State of Mississippi. Filed May 15, 1947. Term No. 91 O. T. 1947.

AUTHORITIES

AUTHORITIES

POINT II

The decision of the Supreme Court of Mississippi in refusing to reverse the trial court for having allowed the alleged confession to be introduced as evidence of the petitioner's guilt in order to obtain his conviction; and in basing such refusal solely upon the ground that the petitioner had denied making the confession, is in itself a denial of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution 36

AUTHORITIES

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 91

ALBERT LEE,

Petitioner,

vs.

STATE OF MISSISSIPPI,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BRIEF FOR PETITIONER

Opinions

The original opinion of the Supreme Court of Mississippi affirming the petitioner's conviction is *Lee* v. *State*, — Miss. —, 29 So. (2d) 211, and appears in the transcript of record, pages 30-32. The opinion of the Supreme Court of Mississippi overruling the petitioner's suggestion of error and making the judgment of said court final is *Lee* v. *State*, — Miss. —, 30 So. (2d) 74 and appears in the transcript of record, pages 33-35.

the petitioner's signature to the alleged confession, Captain Rogers, the senior officer present stating that: "he wouldn't take a statement under those conditions from anybody" (R. 5). The petitioner was then returned to his cell and no further confession was made.

The petitioner then appeared as a witness in his own behalf and testified that between 9:00 and 9:30 on the morning following his arrest (R. 12), he was taken from his cell and carried to the jailer's room where he was questioned by two plain-clothes police officers (R. 12, 13). That the said officers confronted the petitioner with a slip of paper with pencil marks on it, and after measuring the petitioner's foot with the said paper, stated: "It fits all right, this is the one" (R. 13). When the petitioner denied doing anything, he was struck by one of the officers. The petitioner again denied his guilt and was again struck in the stomach with the fist of one of the officers who made the statement: "If you go downstairs and say you didn't do it, it will be mighty bad for you" (R. 13). The petitioner was then carried back to his cell where he remained until two or three o'clock that afternoon when officer McLeod came to the cell and took the petitioner downstairs for questioning (R. 14); the petitioner stating: "I was really scared when I went down there after the man told me it would be mighty bad for me" (R. 15). On his direct examination, the petitioner made no mention of any one other than the two plain-clothes officers being present at the time he was struck and threatened; but upon cross-examination in answer to the District Attorney's question of whether the jailer was present, the petitioner stated: "I don't recall, I am pretty sure he was in there" (R. 16). On cross-examination, the petitioner also denied having admitted his guilt to Captain Rogers and Officer McLeod, stating: "He was asking me some questions. I don't know what all he asked and all I said, but I didn't admit I did it" (R. 17).